

## REMARKS

1. In response to the Office Action mailed July 24, 2007, Applicants respectfully request reconsideration. Claims 1-39 were last presented for examination. Claims 7-9, 14-37 and 39 have been withdrawn. Claims 1-6, 10-13 and 38 are rejected. By the foregoing Amendments, claims 7-9, 14-37 and 39 have been cancelled, and no claims have been amended or added. Thus, upon entry of this paper, claims 1-6, 10-13 and 38 will remain pending in this application. Of these eleven (11) claims, two (2) claims (claims 1 and 38) are independent.
2. Based upon the above Amendment and following Remarks, Applicants respectfully request that all outstanding objections and rejections be reconsidered, and that they be withdrawn.

### *Art of Record*

3. Applicants thank the Examiner for returning form PTO/SB/08a filed by Applicants on April 10, 2007, which has been initialed by the Examiner indicating consideration of the references cited therein. Applicants also thank the Examiner for returning forms PTO 1449 filed by Applicants on April 2, 2004, August 26, 2004, which have been initialed by the Examiner indicating that the Examiner has considered the references cited therein.

### *Election/Restriction*

4. Applicants thank the Examiner for acknowledging the election of Species I, claims 1-6, 10-13 and 38, with traverse.

### *Double Patenting*

5. Claims 1-6, 10-13, and 38 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,731,767.
6. Applicants have filed concurrently with this paper a terminal disclaimer disclaiming the terminal part of the statutory term of any patent granted on the captioned application, which would extend beyond the expiration date of the full statutory term of United States Patent No. 6,731,767. Applicants respectfully assert that these rejections have been obviated by the filing of the terminal disclaimer.

7. Applicants submit the terminal disclaimer solely to advance the prosecution of the application, without conceding that the double patenting rejection is properly based. In filing the terminal disclaimer, Applicants rely upon the rulings of the Federal Circuit that the filing of such a terminal disclaimer does not act as an admission, acquiescence or estoppel on the merits of the obviousness issue. *See, e.g., Quad Environmental Tech v. Union Sanitary Dist.*, 946 F.2d 870, 874-875 (Fed. Cir. 1991); *Ortho Pharmaceutical Corp. v. Smith*, 959 F.2d 936, 941-942 (Fed. Cir. 1992).

### ***Dependent Claims***

8. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicant respectfully asserts that the dependent claims are also allowable over the art of record.

### ***Conclusion***

9. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

10. Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application, cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicants reserve the right to pursue such claims in a continuation or divisional application.

Dated: November 13, 2007

Respectfully submitted,

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